



Department of Toxic Substances Control



Winston H. Hickox
Agency Secretary
California Environmental
Protection Agency

Edwin F. Lowry, Director
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721

Gray Davis
Governor

August 7, 2003

FILE COPY

CERTIFIED MAIL

Ms. Ellen Raber
Department Head
Environmental Protection Department
Lawrence Livermore National Laboratory
7000 East Avenue
Livermore, California 94550

Dear Ms. Raber:

The California Environmental Protection Agency, Department of Toxic Substances Control (DTSC), has reviewed your letter dated July 7, 2003 in response to the 2003 Compliance Evaluation Inspection (CEI) report. The following are DTSC's comments.

Completion of Required Training Courses

No additional submittal is required. LLNL has provided documentation demonstrating that Mr. James Bertao has completed the required training courses for his new job title.

Waste Determination on CES Soil Sample Wastestream W103241

DTSC requested background information on wastestream W103241 in order to determine whether the removal of the F002 code that was originally assigned to this waste by the (Radioactive and Hazardous Waste Management Division) RHWM employee was appropriate. In response to that request, LLNL indicated that the information could not be provided for two reasons. First, the "process used by LLNL's onsite laboratory Chemistry and Environmental Services (CES) to archive multiple soil residues while samples are being analyzed does not require CES representatives to track the origin of the samples, the processes which occurred in areas where the soil samples were collected, or the individuals who performed work in the areas where the soil samples were collected." Second, you explained that the archived soil residues are managed as samples according to the sample exclusion specified in 22 CCR, Section

66261.4(d), and are not considered wastes until combined by a visual process with other archived soil residues prior to the point when the single container of combined soil residues is considered one wastestream (i.e., W103241)".

You further explained that the RHWL representative initially assigned the F002 EPA waste code to wastestream W103241 as a conservative measure, and when RHWL was able to determine the absence of process information, RHWL removed the F002 waste code through a Waste Change Request Form.

Pursuant to 22 CCR 66261.4(d), samples are exempted from hazardous waste management requirements when they are being transported to or from the laboratory, are being analyzed, are being held for analysis or are being maintained in custody for legal reasons. The sample exclusion ends, and the sample becomes subject to regulation when the requirements of the exclusion are no longer being met. If the waste is sent back to the site it came from, the waste would be subject to regulation then, and the generator would be at the original site. If the waste is kept by the laboratory for disposal, the laboratory is the generator when the laboratory determines they are a waste (i.e., they no longer meet the conditions of the exclusion in that they are not being transported from the laboratory, the analysis is complete, the sample will not be returned to the sample collector, and/or the sample is not being stored temporarily in the laboratory after testing for a specified purpose.)

You state that the archived soil residues are managed as samples pursuant to the exclusion and are not considered wastes until combined with other archived soil residues and that once "a certain volume of sample residues are generated after analyses are completed on multiple soil samples, all archived sample residues are composited into one container", at which time "the container of sampling residue is declared a waste and the appropriate label is placed on the container according to generator knowledge and/or analytical results." We disagree that the samples became waste when the archived sample residues are composited into one container. The samples became waste once analyses are complete on each individual sample and there is no further need to store the sample pursuant to the exclusion. As U.S. EPA notes in a memorandum on this subject, "...samples held for testing need not be managed as hazardous waste while they are being tested. Once they are determined to be waste, a determination of whether the waste is hazardous must be made if it hasn't been already."¹

¹ See enclosed memo from U.S. EPA on the Management of Test Samples as Hazardous Waste.

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Therefore, once CES determines that the samples and residues collected will no longer be managed under the terms of the 66261.4(d) exclusion, they become subject to regulation. At that point, CES shall make the appropriate waste classification taking into consideration, as you correctly note, "generator knowledge and/or analytical results." We would like to point out that an attempt should be made to find out the origin of the waste from the generator. If there is an absence of knowledge of how the waste was generated, then sole reliance on analytical results is appropriate.

When the analyses of the samples are complete and there is no further need to store the samples, the samples become waste and can be combined. At that point, CES, as the generator of the waste shall make a hazardous waste determination pursuant to title 22, California Code of Regulations section 66262.11. We agree that the F002 code can be removed by RHWM after it was determined that there was no process knowledge available from the original generator on how the waste was generated. We would encourage RHWM to exercise caution, however, on assigning listed waste codes as "conservative measures" in the future.

Although no additional submittal is required on wastestream W103241, LLNL shall ensure that proper hazardous waste determination is made on all waste streams.

If you have any questions regarding this letter, please call Diana Peebler at (510) 540- 3866.

Sincerely,

Original signed by Patricia Barni for Luz Castillo
Senior Hazardous Substances Scientist
Statewide Compliance Division

Enclosure

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